

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ALBERT MCELHANEY,)	
)	
Petitioner,)	
vs.)	NO. CIV-15-0923-HE
)	
WARDEN BEAR, et al.,)	
)	
Respondent.)	

ORDER

Petitioner Albert McElhaney (“McElhaney”), a state prisoner appearing *pro se*, filed this action seeking habeas corpus relief under 28 U.S.C. § 2241. Consistent with 28 U.S.C. § 636, the matter was referred to Magistrate Judge Gary Purcell, who recommended that the petition be denied. Doc. No. 8. Petitioner has objected to the Supplemental Report and Recommendation.

McElhaney states his petition is brought pursuant to 28 U.S.C. § 2241 to challenge his custody as “in violation of the Constitution or laws or treaties of the United States.” § 2241(c)(3). As Judge Purcell noted, McElhaney’s complaints are either allegations of violations of state law or allegations of discrimination in violation of federal law. The discrimination, however, is alleged to be on the basis of “being unable to access a fully stocked up to date law library; to utilize a computer; to have trained assistance of a law clerk, because this petitioner is a male and not female, [and] is poor and cannot afford to hire counsel.” This is the full extent of McElhaney’s discrimination argument, with no factual basis to lend it any plausibility or basis for why it should lead to habeas relief.


McElhaney argues that the alleged violations of state law constitute an unlawful suspension of the writ of habeas corpus and denial of due process, both in violation of federal law. However, the records provided by the petitioner reflect no such suspension or denial. The Oklahoma Court of Criminal Appeals appears to have declined jurisdiction over McElhaney's previous writ for extraordinary relief because he failed to file a copy of a district court order denying his request for relief. This does not equate to a suspension of the writ of habeas corpus or a denial of due process.

In his objection, McElhaney has requested leave to amend his petition to more clearly reflect the violations of federal law that occurred. However, based on the assertions in his objection, which were merely restatements of the assertions in his petition, the court concludes such amendment would be futile.

For substantially the same reasons as were stated by Judge Purcell, the court **ADOPTS** the Supplemental Report and Recommendation [Doc. No. 8] and **DENIES** the Petition for a Writ of Habeas Corpus [Doc. No. 1].

IT IS SO ORDERED.

Dated this 15th day of January, 2016.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE